

APPEAL NO. 032355
FILED OCTOBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 14, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 9%. The claimant has appealed and asserts that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asking that we adopt the 24% IR certified by Dr. D, the doctor to whom she was referred by her treating doctor for an IR. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on March 2, 2001; and that Dr. P is the designated doctor selected by the Texas Workers' Compensation Commission. The hearing officer did not err in giving presumptive weight to the designated doctor's 9% IR. In this instance, the difference between the ratings of Dr. P and Dr. D is attributable to the fact that Dr. P invalidated the claimant's range of motion (ROM) impairment based on his observation that the claimant exhibited submaximal effort on ROM testing, while Dr. D assigned a rating for measured loss of ROM. We have long recognized that a designated doctor can invalidate ROM based upon such observations. Texas Workers' Compensation Commission Appeal No. 970499, decided May 1, 1997; Texas Workers' Compensation Commission Appeal No. 960311, decided March 27, 1996. The claimant contends that the reports from Dr. D and the treating doctor constitute the great weight of the other evidence contrary to the designated doctor's opinion that the claimant's ROM testing was invalid. We cannot agree that the evidence emphasized by the claimant rises to the level of the great weight of the other medical evidence contrary to the designated doctor's report. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Section 408.125(e), and in determining that the claimant has an IR of 9%.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge